

**BAKER & HOSTETLER LLP**

45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201

*Attorneys for Irving H. Picard, Trustee  
for the Substantively Consolidated SIPA  
Liquidation of Bernard L. Madoff Investment  
Securities LLC and the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation  
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

KOREA EXCHANGE BANK, individually and as  
Trustee for Korea Global All Asset Trust I-1, and  
as Trustee for Tams Rainbow Trust III, and  
KOREA INVESTMENT TRUST  
MANAGEMENT COMPANY,

Defendants.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 11-02572 (SMB)

**TRUSTEE'S MOTION FOR ENTRY  
OF AN ORDER PURSUANT TO  
FED. R. BANKR. P. 8002(d) FOR  
EXTENSION OF TIME TO FILE  
NOTICE OF APPEAL**

Irving H. Picard (the “Trustee”), as trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.*, and the estate of Bernard L. Madoff, individually, moves for entry of an order pursuant to Federal Rule of Bankruptcy Procedure 8002(d)(1), extending the time to file a notice of appeal in the above-captioned adversary proceeding.

### **Background**

On November 22, 2016, this Court entered the Memorandum Decision Regarding Claims to Recovery Foreign Subsequent Transfers (the “Memorandum Decision”). *Securities Investor Protection Corp. v. Bernard L. Madoff Investment Secs. LLC (In re Madoff)*, No. 08-01789 (SMB), ECF No. 14495. The Memorandum Decision directs the parties to “confer for the purposes of submitting consensual orders consistent with the dispositions of the motions in each adversary proceeding. If they cannot submit consensual orders, they should settle orders on notice to the other parties in those adversary proceedings.” *Id.* at 87.

Pursuant to the Memorandum Endorsed Order dated December 5, 2016 (ECF No. 14554), this Court granted the Trustee’s request to extend the time to submit consensual orders or to settle orders on notice under Local Rule 9074-1(a) of the Local Bankruptcy Rules of the Southern District of New York to January 20, 2017. Accordingly, on January 20, 2017, the Trustee submitted a proposed order settling the Memorandum Decision as between the Trustee and defendant Korea Exchange Bank directly to this Court’s chambers. Korea Exchange Bank is one of two defendants in this proceeding; defendant Korea Investment Trust Management Company (“KITMC”) is the other.

KITMC did not consent to the proposed order before the January 20, 2017 deadline. Accordingly, on January 20, 2017, the Trustee filed the Notice of Settlement of Order, which

settles the Memorandum Decision as between the Trustee and KITMC. *Picard v. Korea Exchange Bank*, Adv. Pro. No. 11-02572, ECF No. 104. The January 20, 2017 Notice of Settlement of Order was then superseded by the Corrected Notice of Settlement of Order, dated January 23, 2017. *See id.*, ECF No. 106. On the following day, January 24, 2017, counsel for KITMC filed a letter confirming that KITMC consented to the Trustee's proposed order in the form annexed to the Corrected Notice of Settlement of Order. *See id.*, ECF No. 108.

On January 30, 2017, this Court entered the Final Order Granting Motion to Dismiss Complaint (the "KITMC Order"). *Id.* ECF No. 110.<sup>1</sup> The KITMC Order settles the Memorandum Decision solely with respect to KITMC. As of the date of this Motion, this Court has not yet entered the proposed order settling the Memorandum Decision as to defendant Korea Exchange Bank (the "Pending KEB Order").

### **Relief Requested**

The Trustee seeks an extension of time to file a notice of appeal with respect to the KITMC Order to the later of: (i) twenty-one days after the time prescribed by the Federal Rules of Bankruptcy Procedure; or (ii) fourteen days after the date of entry of the Proposed Order. *See* Fed. R. Bankr. P. 8002(d)(3).

Under Federal Rule of Bankruptcy Procedure 8002(a), the Trustee may file a notice of appeal within fourteen days of entry of the order, judgment or decree appealed from. That fourteen day period may be extended upon a party's motion that is filed within the time prescribed by Rule 8002. *See* Fed. R. Bankr. P. 8002(d)(1)(A). The current deadline for the Trustee to file a notice of appeal from the KITMC Order is Monday, February 13, 2017.

---

<sup>1</sup> ECF No. 110 corrects the prior filing of the Final Order Granting Motion to Dismiss Complaint to include the Memorandum Decision as Exhibit A to the order.

Accordingly, this Motion is being filed within the permissible time frame required by Rule 8002(d)(1)(A).

The Motion should be granted because the relief requested will enable the Trustee to file a single notice of appeal in this adversary proceeding after all claims against both defendants have been dismissed. Standing alone, the KITMC Order is not a final judgment from which the Trustee can appeal as of right, because without entry of the Pending KEB Order, less than all claims against all parties have been dismissed. The Trustee respectfully submits that an extension of time to appeal the KITMC Order will avoid any ambiguity with respect to the Trustee's right to file a notice of appeal. If the Court extends the time to appeal the KITMC Order, the Trustee intends to file a single notice of appeal in this adversary proceeding, provided that the Pending KEB Order is entered before the expiration of the extended time period to appeal the KITMC Order.

Counsel for KITMC and Korea Exchange Bank have represented to the Trustee that they do not object to the relief requested herein.

Dated: February 6, 2017  
New York, New York

By: /s/ David J. Sheehan  
**BAKER & HOSTETLER LLP**  
45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201  
David J. Sheehan  
Email: dsheehan@bakerlaw.com  
Torello H. Calvani  
Email: tcalvani@bakerlaw.com

*Attorneys for Irving H. Picard, Trustee  
for the Substantively Consolidated SIPA  
Liquidation of Bernard L. Madoff Investment  
Securities LLC and the Estate of Bernard L.  
Madoff*